U.S. Department of Justice

Immigration and Naturalization Service

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Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: Nebraska Service Center Date: MAY 30 2001

IN RE: Petitioner: [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

The director determined that the petitioner had failed to demonstrate that he had established a new commercial enterprise in a targeted employment area, that he had made the necessary lawfully obtained funds available to the employment-generating entity, or that he would create the necessary employment.

On appeal, counsel argues that the director looked at the wrong new commercial enterprise in determining that the petitioner had not established that enterprise, that the new commercial enterprise is doing business in a targeted employment area, that the petitioner demonstrated the lawful source of his funds as best he could, that the petitioner should not have to demonstrate the lawful source of funds for hundreds of domestic investors, and that the petitioner had created the necessary employment indirectly and would create the necessary employment directly.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
>
> (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise . . . *which the alien has established* . . . ." (Emphasis added.)

8 C.F.R. 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

(1) The creation of an original business;

(2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or

(3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that he has established.

On the Form I-526, the petitioner indicated that the new commercial enterprise was [redacted]. Counsel's brief accompanying the petition asserts that the petitioner's funds "will be used to capitalize [redacted] (NWI)." The brief went on to discuss GRFF's alleged accomplishments. In support of the petition, the petitioner submitted an undated investment agreement whereby the petitioner expressed his interest in investing in GRFF and "NWI Bank, in formation, through GRFF." The petitioner also submitted a subscription agreement and power of attorney for GRFF and an escrow agreement dated March 16, 1997, whereby the petitioner agreed to place funds in escrow to be released to GRFF upon the approval of the petitioner's petition.

Based on the record, the director concluded that the alleged new commercial enterprise was GRFF, a partnership established on February 5, 1996 according to counsel's initial brief. As the petitioner had no hand in the establishment of GRFF, the director concluded the petitioner had not established a new commercial enterprise.

On appeal, counsel asserts the director erred in defining the new commercial enterprise as GRFF, the partnership listed on the I-526. Counsel further asserts that the new commercial enterprise is actually NWI, of which the petitioner is a "founding shareholder." As a founding shareholder of NWI, counsel concludes, the petitioner "played a role in the creation" of NWI.

The petitioner submits a stock certificate issued to the petitioner by [redacted] on December 15, 1998; a shareholder list for [redacted] listing the petitioner as a shareholder as of October 6, 1998; the petitioner's subscription agreement with [redacted] the offering circular; an FDIC certificate for [redacted] issued December 8, 1998; the Articles of Incorporation for [redacted] filed August 8, 1998; a letter addressed to the petitioner from [redacted] acknowledging receipt of $500,000 and confirming that the petitioner is a founding shareholder.

Given the record before the director, we cannot conclude that she erred in concluding the claimed new commercial enterprise was the partnership listed on the I-526 and for which the petitioner had provided subscription and escrow agreements. Even given the new documentation submitted on appeal, the record is somewhat inconsistent regarding the petitioner's investment.

Even if we were to consider [redacted] the new commercial enterprise, the petitioner did not establish that business either. That the petitioner is a "founding shareholder" as defined by the bank is not determinative. In a large corporation, the promoters and incorporators develop the business proposal, perform the initial research and negotiations, and often enter contracts and obtain or at least apply for business permits and licenses prior to the sale of shares. In the instant case, the petitioner purchased shares in a large bank through a public offering. Regardless of whether the petitioner purchased his shares prior to the date the bank opened for business, there is simply no evidence that the petitioner had a hand in the establishment of the bank.

The petitioner record does not reflect that the petitioner created an original business. He does not claim to have restructured, reorganized, or expanded an existing business. Thus, the petitioner has not demonstrated that he established a new commercial enterprise.

MANAGEMENT

8 C.F.R. 204.6(j)(5) states:

> To show that the petitioner is or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment, the petition must be accompanied by:
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> (i) A statement of the position title that the petitioner has or will have in the new enterprise and a complete description of the position's duties;
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> (ii) Evidence that the petitioner is a corporate officer or a member of the corporate board of directors; or

> (iii) If the new enterprise is a partnership, either limited or general, evidence that the petitioner is engaged in either direct management or policy making activities. For purposes of this section, if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.

Beyond the decision of the director,[1] the petitioner will not be engaging in the management of the enterprise.

If the new commercial enterprise is truly [redacted] as claimed on appeal, the petitioner is merely a shareholder. There is no evidence the petitioner is or will be a director or officer of the bank. Moreover, the petitioner assigned his voting rights to [redacted] for the first five years of his investment. Thus, the petitioner does not even have the normal voting rights of a shareholder.

Even if the petitioner were to revert to the claim on the Form I-526, the petitioner will not be actively engaged in the management of [redacted] On the Form I-526, the petitioner indicated that his position with [redacted] was to serve as a limited partner. The subscription agreement, however, includes a power of attorney in favor of the General Partner. Thus, it is clear that the petitioner here does not in fact have the rights normally granted to limited partners under the [redacted] As such, the petitioner is a purely passive investor.

MINIMUM INVESTMENT AMOUNT

The petitioner indicates that the petition is based on an investment in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to $500,000.

8 C.F.R. 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. 204.6(j)(6) states that:

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[1] An EB-5 application that fails to comply with the specific technical requirements of the law may be denied even if the Service Center does not identify all grounds for denial. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 29 (E.D. Calif. 2001).

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. 204.6(i).

A petitioner must demonstrate that the location of the business was a targeted employment area at the time of filing. Matter of Soffici, I.D. 3359, 2-3 (Assoc. Comm., Examinations, June 30, 1998) cited with approval in Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 23-24, (E.D. Calif. 2001).

The petitioner submitted a business plan for NWI indicating that NWI was negotiating a lease for space in the Metropolitan Park West Tower in Seattle, Washington and a letter from the Washington Employment Security Department.

The director noted that the evidence submitted reflected only that certain areas in Washington State were designated as having high unemployment prior to the date of filing.

On appeal, counsel submits a letter from the Washington Employment Security Department asserting:

The 1998 CZ/EZ rate for the total of all subareas as previously described by your office is 8.8% for the most recent year available. This number is generated using methodologies that are linked to the 1990 Census and do not incorporate any changes in

the relationships of employment or unemployment that may have occurred since 1990. The U.S. unemployment rate for 1997 is 4.9%.

Attached to the letter are more 1995 data for several sub-areas of Seattle. The petitioner also submits a letter from the Department of Housing and Urban Development regarding the designation of a Seattle Enterprise Community, a map of Seattle with shaded areas (the significance of which is not explained), and another map entitled "City of Seattle, Federal Enterprise Community Boundaries."

8 C.F.R. 204.6(i) provides:

> The state government of any state of the United States may designate a particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate). Evidence of such designation, including a description of the boundaries of the geographic or political subdivision and the method or methods by which the unemployment statistics were obtained, may be provided to a prospective entrepreneur for submission with form I-526. Before any such designation is made, an official of the state must notify the Associate Commissioner for Examinations of the agency, board or other appropriate governmental body of the state which shall be delegated the authority to certify that the geographic or political subdivision is a high unemployment area.

Although the Washington Employment Security Department was designated to determine high unemployment areas, the letter submitted by the petitioner does not meet the requirements set forth in 8 C.F.R. 204.6(i). The letter does not define the "CZ/EZ" rate, and implies the agency continues to rely on outdated data. Any determinations by the HUD or other federal agencies do not appear relevant under the regulations, which require either specific unemployment rates for a metropolitan area[2] or a designation by a state. Moreover, while the Metropolitan Park West Tower appears to be located in the Federal Enterprise Community, it is not clear that it is located in one of the sub-areas referenced in the letter from the Employment Security Department.

In light of the above, the minimum investment amount in this case is $1,000,000.

INVESTMENT OF CAPITAL

8 C.F.R. 204.6(e) states, in pertinent part, that:

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[2] The Bureau of Labor Statistics' website reflects that the unemployment rate of the Seattle-Bellevue-Everett metropolitan area was 3.3 percent in June 1998, when the petition was filed.

[redacted]

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the

> petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998).

The director noted that the escrow agreement provided for the return of the petitioner's funds if a petition was not approved in 12 months. Thus, the director concluded that the funds may have been returned to the petitioner and were not committed to [redacted]

On appeal, counsel argues that the funds were actually transferred to [redacted] The petitioner submits the stock certificate, list of shareholders, and [redacted] letter discussed above as well as a letter from [redacted] o [redacted] of an unspecified bank requesting that the petitioner's escrow funds be transferred to [redacted] and a receipt dated June 4, 1998 for a deposit with American Retirement, Inc. [redacted] General Partner).

The record now reflects that the petitioner placed $500,000 at risk by purchasing 25,000 shares of stock in [redacted] However, as stated above, the minimum investment amount in this case is $1,000,000. The record remains absent the petitioner has invested or committed $1,000,000 to [redacted]

SOURCE OF FUNDS

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
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> (i) Foreign business registration records;
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> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
>
> (iii) Evidence identifying any other source(s) of capital; or

> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, I.D. 3362, supra, at 6; Matter of Izumii, I.D. 3360, supra, at 26. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Id. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. Spencer Enterprises, Inc. v. United States, supra, at 22(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

In the brief submitted with the petition, counsel asserts the petitioner obtained his funds from a loan from his company in China. In support of the petition, the petitioner submitted a profit and loss statement for [redacted]; a business license for Great Wall, established August 2, 1996, listing the petitioner as the legal representative; a balance sheet for Great Wall for December 30, 1997 reflecting negative profits; a lease for Great Wall; and a certification of professional experience for the petitioner.

The director noted that the record contained no evidence of the accumulation of funds by the petitioner nor any transactional documentation reflecting the source of the funds deposited in escrow.

On appeal, counsel asserts the petitioner documented the source and path of the funds. In his conclusion, counsel claims another petitioner who invested in NWI was approved and argues:

> The biggest difference [sic] two files is that the approved file was for a European that borrowed his capital from his parents, while this file concerns a Chinese [sic] that built his own business. The source of funds rules, in particular, disproportionately impact Asians because of scant financial reporting requirements. Even so, [the petitioner] documented the source of his funds as well as his legal business activities. There should be no doubt about the legality of his funds.

Each petition is adjudicated on its own merits, and it is not known whether the other petition to which counsel refers differed in a material way from the instant petition or whether it was approved in error.

Regardless, counsel's argument that the petitioner established the path and source of his funds is not supported by the record. While counsel asserts the promissory note whereby the petitioner allegedly borrowed funds from his business was submitted with the initial petition, the note is not in the record and is not referenced on the list of evidence attached to counsel's initial brief. The record contains no wire transfer receipts, no bank statements reflecting withdrawals, and no cancelled checks. Counsel has provided no evidence that such transactional documentation is unavailable in Asia. The bank letters in the record are insufficient as they do not reflect the source of the deposit into the escrow account. Thus, the record fails to establish the source or path of the petitioner's alleged investment.

SOURCE OF OTHER FUNDS

8 C.F.R. 204.6(g)(1) states, in pertinent part:

> The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons...**provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means**. (Emphasis added.)

The director noted that the petitioner had failed to submit any evidence of the lawful source of the remaining investors' funds. On appeal, counsel argues that this "new interpretation" is not supported by the plain language of the regulations and would lead to nonsensical results. Counsel questions whether a petitioner who entered a partnership with Boeing would need to demonstrate the lawful source of every shareholder of Boeing.

Counsel's argument regarding the plain language of the regulations is not persuasive. If the language in 8 C.F.R. 204.6(g) emphasized in bold above merely referred to the petitioner's funds, it is not clear why such language would be necessary. The regulations already require that a petitioner demonstrate the lawful source of his own funds. Counsel's argument regarding a partnership with Boeing is equally unpersuasive. In such a case, the petitioner would merely need to demonstrate that his partner, a large corporation, was generating lawful income that was being invested in the partnership with the petitioner. This would not be a difficult proposition for a well-known company like Boeing. Moreover, as the current regulations were published as proposed regulations prior to being issued in their final form, the proper time to raise this issue was at the time the regulations were proposed. The plain language of the regulations is clear, and the Service is bound by the regulations.

It is acknowledged that this requirement poses a hardship in cases such as the instant petition where the petitioner responds to a public offering along with several hundred other investors. In this case, however, as is likely to be the case where a petitioner claims to be investing with

several hundred other investors as part of a public offering, the petitioner has not established a new commercial enterprise and will not be engaged in the management of the business. Therefore, it is unlikely that this requirement would pose a hardship for investors who meet every other requirement.

EMPLOYMENT CREATION

The petitioner indicated on the petition that he was investing in a regional center and that he would create at least 10 jobs indirectly.

The director, assuming the petitioner's funds were in escrow, concluded that the funds had not been made available to the employment-creating enterprise and, thus, the petitioner could not take credit for any job creation.

On appeal, counsel asserts that the bank has 11 employees. Counsel further asserts that only one other investor in the bank is seeking benefits under the entrepreneur program. Using a multiplier of 3.7:1, counsel concludes the petitioner has already created the necessary jobs indirectly. Finally, counsel asserts that the business plan for the bank establishes that the bank will create the necessary employment directly.

Regional Center Activities

8 CFR 204.6(m)(7) states, in pertinent part:

> An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.
>
> (i) Exports. For purposes of paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

8 CFR 204.6(m)(4) provides that regional centers must submit proposals to the Service in order to obtain approval to participate in the pilot program.

In support of the petition, the petitioner submitted evidence that [redacted] is a designated regional center. As counsel points out on appeal, however, the petitioner has not invested in GRFF, but in [redacted] That the petitioner routed his investment through [redacted] and assigned his shareholder voting rights to [redacted] in no way demonstrates that he invested in [redacted] or that [redacted] is one of the projects contained in [redacted] proposal submitted to the Service as part of its

application for regional-center status. The fact tha[redacted] was involved in arranging the petitioner's investment or that[redacted] and [redacted] share management personnel does not transform the petitioner's investment into a regional center investment.

Even if we considered the petitioner to have invested in [redacted] as stated above, the petitioner has not established[redacted] was one of the projects proposed to the Service in [redacted] application for regional-center status. It is not the intention of the Service to encourage entities to obtain regional-center status based on a few qualifying projects, only to have these entities treat their status as a license to engage in a variety of unrelated activities. Such new activities, had they been mentioned in the original application for regional-center status, may or may not have had an adverse impact on the determination to grant regional-center status. If the Service were to accept a regional center's expansion into any and all new projects, petitioners would effectively be able to bypass the requirements of 8 C.F.R. 204.6(j)(4) regarding the submission of evidence to prove the direct creation of employment.

As the petitioner has not demonstrated an investment into a designated regional center, the Service need not evaluate whether the petitioner's methodologies are reasonable.

Direct Job Creation

8 C.F.R. 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. 204.6(e) states, in pertinent part:

> *Full-time employment* means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

[redacted]

> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

> The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

Full-time employment means continuous, permanent employment. See Spencer Enterprises, Inc. v. United States, supra, at 19 (finding this construction not to be an abuse of discretion).

The bank has thus far only created 11 jobs. As there are two investors and the petitioner has not submitted any agreement allocating direct jobs between the two investors, the bank must demonstrate that it will create at least 20 jobs.

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. Matter of Ho, supra. Elaborating on the contents of an acceptable business plan, Matter of Ho states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target

market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

The petitioner submits a detailed and credible business plan. The plan, however, only projects 16 employees in the first three years. As such, it is not reasonable to conclude the bank will create at least 20 jobs to be allocated between the two investors.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.